



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

COPY MAILED

MAY 28 2004

OFFICE OF PETITIONS

In re Application of
Hiromi Ikeda et al.
Application No. 10/705,859
Filed: November 13, 2003
Attorney Docket No. 00862.023317

: DECISION DISMISSING
: PETITION

This is a decision on the petition filed April 16, 2004, requesting that the above-identified application be accorded a filing date of October 21, 2003 with Figure 14 described in the specification as a part of the original disclosure.

The application was filed November 13, 2003 but on March 31, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Item(s) in a Nonprovisional Application stating that the application had been accorded a filing date of November 13, 2003 but that Figure 14 described in the specification (description and claims) appeared to have been omitted from the application.

In response, on April 16, 2004, the present petition was filed. Petitioner argues that Figure 14 was included on page 14/15 and was not missing on November 13, 2003. In support, a copy of petitioner's postcard receipt was supplied with the present petition. Petitioner requests that the application be accorded a filing date of November 13, 2003 with Figure 14 as a part of the original disclosure.

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503).

Unfortunately, in this case, petitioners' postcard itemizes the number of drawings sheets to be 15 and while a review of the record discloses that 15 sheets of drawings

BEST AVAILABLE COPY

were in fact filed on November 13, 2004, the drawings sheets include two (2) copies of Figures 10 (sheet 10/15), which could be an error made on the part of the applicant. The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The showing of record is that the Figure 14 was missing upon application and that petitioner's have not shown that the sheet 14/15 was in fact filed with the other application papers on November 13, 2003.

As petitioners have not provided any convincing evidence that Figure 14 was filed in the USPTO on November 13, 2003, the petition must be **DISMISSED**.

Petitioner may file Figure 14 as a preliminary amendment.

As this petition was necessitated by applicants' filing error rather than an error on the part of the Office, the petition fee will not be refunded.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of November 13, 2003, using the application papers filed on that date.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions